

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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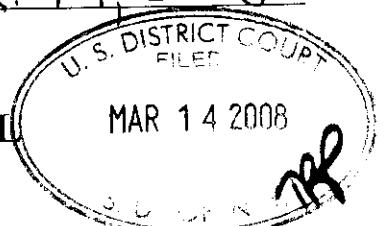
Document #

U.S.C.A. # _____

U.S.D.C. # 07-cv-2813

JUDGE: CM

DATE: MAR. 14, 2008



INDEX TO THE RECORD ON APPEAL

PREPARED BY (NAME): THOMAS R. PISARCYK
 FIRM: U.S. DISTRICT COURT - SOUTHERN DISTRICT OF NEW YORK
 ADDRESS: 500 PEARL STREET, ROOM 370
NEW YORK, NEW YORK 10007
 PHONE NO.: (212) 805 - 0636

DISTRICT COURT DOCKET ENTRIES -----

DOCUMENT DESCRIPTION **DOC. #**

CLERK'S CERTIFICATE

SEE ATTACHED LIST OF NUMBERED DOCUMENTS

**** ONLY CIRCLED DOCUMENTS ARE INCLUDED ****

**** ALL OTHERS MISSING AT THIS TIME ****

Original Record

Supplemental Record

The record in the above entitled case was indexed to the U.S.C.A.
for the Second Circuit on the 14th Day of March, 2008.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Embascado

-V-

D C Comics et al

U.S.C.A. # _____

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Clerk's Certificate

I, J. Michael McMahon, Clerk of the Court of the United States District Court for the Southern District of New York, do hereby certify that the certified copy of the docket entries and the original filed papers numbered 1 Through 24, inclusive, constitutes the Original record on appeal in the above entitled proceedings except for the following missing documents:

Date Filed

Document Description

BALANCE OF FILE MISSING AT THIS TIME

In Testimony Whereof, I have caused the seal of said Court to be hereunto affixed, at the City of New York,
this 14th Day of March In this year of our Lord, Two Thousand and Eight, and the Independence of
the United States this 232nd year.

J. Michael McMahon, Clerk

By

Deputy Clerk

APPEAL, CLOSED, PRO-SE

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:07-cv-02813-CM
Internal Use Only

Embuscado v. DC Comics et al
Assigned to: Judge Colleen McMahon
Demand: \$9,999,000
Cause: 15:1125 Trademark Infringement (Lanham Act)

Date Filed: 04/09/2007
Date Terminated: 02/08/2008
Jury Demand: None
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Date Filed	#	Docket Text
04/09/2007	1	COMPLAINT against DC Comics, Warner Bros. Entertainment Company, Inc., Time Warner, Inc.. (Filing Fee \$ 350.00, Receipt Number 611161.) Document filed by Restituto Embuscado. (tro) (Entered: 04/10/2007)
04/09/2007		SUMMONS ISSUED as to DC Comics, Warner Bros. Entertainment Company, Inc., Time Warner, Inc.. (tro) (Entered: 04/10/2007)
04/09/2007		Magistrate Judge Kevin N. Fox is so designated. (tro) (Entered: 04/10/2007)
04/09/2007		Mailed notice to Commissioner of Patents and Trademarks to report the filing of this action. (tro) (Entered: 04/10/2007)
04/16/2007	2	AFFIDAVIT OF SERVICE of Summons and Complaint. DC Comics served on 4/11/2007, answer due 5/1/2007. Service was accepted by Dina Sankari. Document filed by Restituto Embuscado. (cd) (Entered: 04/19/2007)
04/16/2007	3	AFFIDAVIT OF SERVICE of Summons and Complaint. Time Warner, Inc. served on 4/11/2007, answer due 5/1/2007. Service was accepted by Matt Durnin. Document filed by Restituto Embuscado. (cd) (Entered: 04/19/2007)
05/09/2007	6	AFFIRMATION OF SERVICE of Summons and Complaint. Warner Bros. Entertainment Company, Inc. served on 4/12/2007, answer due 5/2/2007. Service was accepted by Wendy Mayorga, registered agent. Document filed by Restituto Embuscado. (jar) Modified on 5/14/2007 (Rivera, Jazmin). (Entered: 05/14/2007)
05/10/2007	4	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying Warner Bros. Entertainment Inc., WBE, Time Warner, DC as Corporate Parent. Document filed by DC Comics, Warner Bros. Entertainment Company, Inc., Time Warner, Inc..(mbe) (Entered: 05/11/2007)
05/10/2007	5	ANSWER to Complaint. Document filed by DC Comics, Warner Bros. Entertainment Company, Inc., Time Warner, Inc..(mbe) (Entered: 05/11/2007)
06/01/2007	7	CALENDAR NOTICE (Rule (16) conference) Initial Conference set for 7/13/2007 at 11:30 AM in Courtroom 21B, 500 Pearl Street, New York, NY 10007 before Judge Colleen McMahon, U.S. District Court, 500 Pearl Street, New York, New York 10007. SO ORDERED. (Signed by Judge Colleen McMahon on 5/31/2007) (jmi) (Entered: 06/04/2007)
07/13/2007		MEMORANDUM TO THE DOCKET CLERK: Judge McMahon agrees to take related "copyright" infringement case (07-cv-4631) presently before Judge Kaplan. (js) (Entered: 07/19/2007)
07/18/2007	8	ORDER REFERRING CASE TO MAGISTRATE JUDGE. Order that case be referred to the Clerk of Court for assignment to a Magistrate Judge for General Pretrial (includes scheduling (except for cut off date), discovery, non-dispositive pretrial motions, and settlement). Referred to Magistrate Judge Kevin Nathaniel Fox. (Signed by Judge Colleen McMahon on 7/13/07) (tro) (Entered: 07/19/2007)
07/18/2007	9	CIVIL CASE MANAGEMENT PLAN: This case is not to be tried to a jury. Discovery pursuant to FRCP 26(a) shall be exchanged by 7/31/2007. Joinder of Parties due by 8/31/2007. Amended Pleadings due by 8/31/2007. All Discovery due by 1/31/2008. Plt's deposition shall be taken first, and shall be completed by 9/30/2007. Expert disclosures conforming with Rule 26 must be made no later than following dates: Plt(s) expert report(s) by 1/10/2008. Dft(s) expert report(s) by 12/1/2007. Judge McMahon's Rules governing electronic discovery apply automatically to this case. This case has been designated to Magistrate Judge Kevin Nathaniel Fox for resolution of discovery disputes. Motion for summary judgment due by 2/22/2008. Responses by plt or dft due by 3/22/2008. Replies due by 3/29/2008. The obligation to serve a pretrial order is suspended pending determination of the motion. (Signed by Judge Lawrence M. McKenna on 7/13/2007) (jar) (Entered: 07/19/2007)
07/19/2007	10	ORDER REFERRING CASE TO MAGISTRATE JUDGE. Order that case be referred to the Clerk of Court for assignment to a Magistrate Judge for General Pretrial (includes scheduling except for cut off date, discovery, non-dispositive pretrial motions, and settlement). Referred to Magistrate Judge Kevin Nathaniel Fox. (Signed by Judge Colleen McMahon on 7/13/07) (tro) (Entered: 07/20/2007)
07/31/2007	11	ORDER: Telephone Conference set for 10/8/2007 at 10:30 AM before Magistrate Judge Kevin Nathaniel Fox. The conference shall be initiated by counsel to the dfts to (212) 805-6705. (Signed by Judge Kevin Nathaniel Fox on 7/30/2007) Copies mailed by chambers.(jar) (Entered: 08/01/2007)
08/03/2007	12	ORDER: The Court's order dated July 30, 2007, in the above captioned action, scheduling a telephonic conference, is hereby vacated. So Ordered. (Signed by Judge Kevin Nathaniel Fox on 8/2/07) Copies Mailed By Chambers.(js) (Entered: 08/06/2007)
08/14/2007	13	NOTICE OF REASSIGNMENT OF A REFERRAL TO ANOTHER MAGISTRATE JUDGE. The referral in the above entitled action has been reassigned to Magistrate Judge Douglas F. Eaton, for General Pretrial. Magistrate Judge Kevin Nathaniel Fox no longer referred to the case. (laq) (Entered: 08/16/2007)
08/16/2007		Mailed notice to the attorney(s) of record. (laq) (Entered: 08/16/2007)
09/21/2007	14	ORDER: Magistrate Judge Eaton was selected to carry out Judge McMahons order of reference dated 7/13/2007. The parties should list both docket numbers on all letters and papers concerning either of these two cases. Please review the standing order for discovery disputes. If requested, Magistrate Judge will hold one settlement conference. (Signed by Judge Douglas F. Eaton on 9/21/07) (kco) (Entered: 09/24/2007)

11/01/2007	<u>15</u> MEMORANDUM AND ORDER I am now responding to Mr. Perkins's one-page one page letter to me dated 10/29/07, enclosing his portion of a joint letter to me (20 pages, plus Exhibits A through J), and as further set forth in this document. (Signed by Judge Douglas F. Eaton on 11/1/07) copies sent by chambers.(cd) (Entered: 11/05/2007)
11/06/2007	<u>16</u> TRANSCRIPT of proceedings held on 7/13/07 @ 11:15 AM before Judge Colleen McMahon. (kco) (Entered: 11/06/2007)
11/21/2007	<u>17</u> RESPONSE re: <u>15</u> Order, Document filed by Restituto Embuscado. (cd) (Entered: 11/27/2007)
01/10/2008	<u>18</u> LETTER addressed to Magistrate Judge Douglas F. Eaton from Patrick T. Perkins dated 10/29/07 re: "Defendants' 10/29/07 letter motion for dismissal, enclosing a 20-page draft letter with Exhibits A through J.". Document filed by DC Comics, Warner Bros. Entertainment Company, Inc., Time Warner, Inc.(ae) (Entered: 01/10/2008)
01/10/2008	<u>19</u> LETTER addressed to Magistrate Judge Douglas F. Eaton from Patrick T. Perkins dated 11/14/07 re: "Defendants' 11/14/07 letter motion for dismissal.". Document filed by DC Comics, Warner Bros. Entertainment Company, Inc., Time Warner, Inc.(ae) (Entered: 01/10/2008)
01/10/2008	<u>20</u> REPORT AND RECOMMENDATIONS: For the reasons set forth in this R&R, I recommend that Judge McMahon (a) grant defendants' 10/29/07 letter motion for dismissal (Docket Item #18) and defendants' 11/14/07 letter motion for dismissal (Docket Item #19), and (b) dismiss Mr. Embuscado's Complaints, with prejudice, in both 07cv2813 and 07cv4631. Objections to R&R due by 1/23/2008 (Signed by Magistrate Judge Douglas F. Eaton on 1/10/08) Copies Mailed By Chambers. (dle) Modified on 1/28/2008 (dle). (Entered: 01/10/2008)
01/10/2008	MEMORANDUM from the Chambers of Douglas F. Eaton, U.S. Magistrate Judge dated 1/10/08. I hereby close the above Order of Reference for magistrate judge statistical purposes. This case remains open. Reason: On 1/10/08, I issued a Report and Recommendation to Judge McMahon.(jco) (Entered: 01/16/2008)
02/07/2008	<u>21</u> MEMO ENDORSEMENT on re: <u>20</u> Report and Recommendations; ENDORSEMENT: objection to this report were due on 1/20/08. I have received no objections and no request for extension of time. I hereby adopt the Report as the Courts Opinion and order that both cases be dismissed with prejudice. The Clerk shall close both files (07cv2813 & 07cv4631). (Signed by Judge Colleen McMahon on 2/6/08) (pl) (Entered: 02/08/2008)
02/08/2008	Transmission to Judgments and Orders Clerk. Transmitted re: <u>21</u> Memo Endorsement,, to the Judgments and Orders Clerk. (pl) (Entered: 02/08/2008)
02/08/2008	<u>22</u> CLERK'S JUDGMENT That for the reasons stated in the Court's Memo Endorsed Order dated February 6, 2008, the report is adopted and both cases (07 Civ. 2813 (CM) and 07 Civ. 4631 (CM)) are dismissed with prejudice; accordingly, these cases are closed. (Signed by J. Michael McMahon, clerk on 2/8/08) (Attachments: # <u>1</u> notice of right to appeal)(ml) (Entered: 02/08/2008)
02/14/2008	Mailed notice of Right to Appeal re: <u>22</u> Clerk's Judgment, to Attorney(s) of Record: Patrick Thierry Perkins. (Entered: 02/14/2008)
02/26/2008	<u>23</u> MOTION for Leave to Proceed in forma pauperis on Appeal. Document filed by Restituto Embuscado.(pl) (Entered: 02/27/2008)
02/26/2008	<u>24</u> NOTICE OF APPEAL from <u>22</u> Clerk's Judgment. Document filed by Restituto Embuscado. Copies mailed to attorney(s) of record: Perkins Law Office, P.C. (tp) (Entered: 03/13/2008)
02/26/2008	Appeal Remark as to <u>24</u> Notice of Appeal filed by Restituto Embuscado. NO FEE. IFP GRANTED 2/28/08. (tp) (Entered: 03/14/2008)
02/28/2008	MEMO ENDORSEMENT on re: <u>23</u> MOTION for Leave to Proceed in forma pauperis on Appeal filed by Restituto Embuscado. ENDORSEMENT: Granted. (Signed by Judge Colleen McMahon on 2/28/08) (bw) (Entered: 02/29/2008)
03/14/2008	Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>24</u> Notice of Appeal. (tp) (Entered: 03/14/2008)
03/14/2008	Transmission of Notice of Appeal to the District Judge re: <u>24</u> Notice of Appeal. (tp) (Entered: 03/14/2008)